

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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RM No. 8775

In the Matter of)
)
The Provision of Interstate and International)
Interexchange Telecommunications Service)
Via the "Internet" by Non-Tariffed, Uncertified)
Entities)
)
America's Carriers Telecommunication)
Association ("ACTA"))
)
Petition for Declaratory Ruling, Special Relief,)
and Institution of Rulemaking Against:)
)
VocalTec, Inc.; Internet Telephone Company;)
Third Planet Publishing, Inc.; Camelot)
Corporation; Quarterdeck Corporation; and)
Other Providers of Non-tariffed and Uncertified)
Interexchange Telecommunications Services,)
Respondents.)

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COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") submits these Comments in response to the petition filed by America's Carriers Telecommunication Association ("ACTA") on March 4, 1996. In this proceeding, ACTA seeks the institution of a rulemaking, together with a declaratory ruling and special relief, against several providers of computer software products that enable end users to utilize the Internet for the exchange of interexchange voice transmissions — in other words, for long distance telephone service. ACTA requests the Commission to issue a declaratory ruling "confirming its authority over interstate and international telecommunications services using the Internet," to order the respondents "to immediately stop their unauthorized provisioning of telecommunications services pending their compliance with 47 U.S.C. §§ 203 and

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214,” and “to institute rulemaking to govern the use of the Internet for providing telecommunications services.”

SWBT agrees that ACTA has identified a serious problem attributable to pricing inequities based on the exemption of enhanced services providers (“ESPs”) from access charges. ACTA has, however, proposed the wrong solution to that problem (i.e., Commission regulation of computer software providers or of the Internet itself). The Commission could solve the price disparity immediately either by eliminating the ESP exemption or by enforcing its rules against ESPs that provide interstate telecommunications services without paying applicable access charges. However, the correct long-term solution to the uneconomical use of networks driven by anomalous pricing can be achieved only through immediate reform of the entire access charge framework. Regardless of the immediate solution chosen by the Commission, it must proceed with access reform on an expedited basis.

I. THE COMMISSION DOES NOT HAVE AUTHORITY TO REGULATE COMPUTER SOFTWARE VENDORS AS COMMON CARRIERS.

In the petition, ACTA explained that it is a national trade association of competitive interexchange, non-dominant telecommunications companies that provide interexchange telecommunications services on an intrastate, interstate, and international basis to the public at large. ACTA stated that its carrier members are subject to regulation by the Commission and by state public utility regulators and must comply with the nondiscrimination requirements of Title II of the Communications Act.¹

¹ACTA Petition, at 2.

ACTA pointed out that the respondent computer software providers, in contrast, “do not comply with or operate subject to the same statutory and regulatory requirements as ACTA’s carrier members,”² even though “[a] growing number of companies [including respondents] are selling software for the specific purpose of allowing users of the Internet to make free or next to free local, interexchange (intraLATA, interLATA) and international telephone calls using the user’s computer.”³ ACTA suggested that the Commission “issue a declaratory ruling officially establishing its interest in and authority over interstate and international telecommunications services using the Internet,” as well as “an order to the Respondents to immediately stop arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services without complying with applicable provisions of the Act. . .”⁴

ACTA’s line of reasoning appears to flow as follows: (1) ACTA’s member interexchange carriers are subject to streamlined regulation by the Commission; (2) voice transmission over the Internet is substantially similar to the interexchange telecommunications services provided by ACTA’s members; and, therefore, (3) vendors of the computer software that enables voice transmission over the Internet must be subject to regulation by the Commission. ACTA’s argument, however, requires leaps of logic that cannot be sustained.

Software vendors *are not* common carriers subject to Commission regulation unless they undertake more than the development or marketing of software. The Communications Act defines a common carrier as “any person engaged as a common carrier for hire, in interstate or

²Id.

³ACTA Petition, at 3.

⁴ACTA Petition, at 4.

foreign communication by wire or radio or in interstate or foreign radio transmission of energy.

. .”⁵ Unless software vendors also engage in the common carriage of communications over wire or radio transmission facilities, they are not common carriers. Regulation of the development or marketing of software is not authorized by the Communications Act and, in any event, would be poor public policy. The public interest is best served by encouraging software developers and vendors to offer creative and innovative products, unhampered by any regulatory limitations.

For the foregoing reasons, the Commission should decline to issue the declaratory ruling and to order the special relief against the respondents, as requested in ACTA’s petition.

II. CONSISTENT WITH THE TELECOMMUNICATIONS ACT, THE COMMISSION SHOULD DECLINE TO ATTEMPT TO REGULATE THE INTERNET ITSELF.

In the Telecommunications Act of 1996, Congress explicitly stated the national policy of an unregulated Internet, as follows:

It is the policy of the United States —

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;⁶

To the extent that ACTA’s Petition requests the Commission to regulate the Internet itself, such a request is inconsistent with national law as well as with public policy, and the Commission should decline to attempt such action.

⁵47 U.S.C. § 153(10).

⁶47 U.S.C. § 230(b).

III. THE COMMISSION SHOULD ADDRESS THE RATE DISPARITY IDENTIFIED BY ACTA.

ACTA correctly asserts in its Petition that, under pricing structures in place today, readily available computer software enables Internet users to make long distance telephone calls at no cost to them over and above the generally flat-rated cost of their local loop and of their Internet access.⁷ Internet access providers are able to price Internet access on an inexpensive flat-rated basis because their own cost of service is lower than that of interexchange carriers. More than a decade ago, in order to encourage the development of the nascent enhanced services industry, the Commission granted a “temporary” exemption of ESPs from interstate access charges.⁸ Twelve years later, that exemption remains in full effect. ESPs are thus permitted to obtain access to the interstate, interexchange network *for the purpose of providing interstate enhanced services* by obtaining a local loop pursuant to a local exchange carrier’s (LEC’s) local exchange tariff.⁹ In contrast, interexchange carriers that provide interstate telecommunications services are subject to usage sensitive carrier common line charges, which are reflected in their rates to end users. All ESPs are therefore being subsidized in their usage of the portion of the local exchange network allocated to the interstate jurisdiction by other users of that network, such as the interexchange carriers. Furthermore, ESPs are in violation of Commission rules when they improperly use the ESP exemption to provide interstate telecommunications services without paying applicable access charges, and the Commission should take appropriate action to enforce

⁷ACTA Petition, at 3.

⁸See, 93 FCC 2d 241 (1983), affirmed sub nom., N.A.R.U.C. v. FCC, 737 F.2d 1095 (D.C. Cir. 1984).

⁹The ESP pays the flat-rated subscriber line charge but not the usage-sensitive carrier common line charges.

its rules.¹⁰ Finally, when services provided by ESPs, such as Internet long distance, become practically indistinguishable from the services provided by interexchange carriers, and when prices for such services are artificially low because of the improper use of the ESP exemption from access charges, the inequity is exacerbated by a migration of usage from interexchange carriers to Internet access providers.¹¹

No one can seriously argue that the original purpose of the ESP exemption from access charges, i.e., to foster development of an infant industry, justifies the current disparity in prices. Such industry giants as AT&T, MCI, and Microsoft are significant providers of enhanced services. As AT&T has pointed out, "the enhanced services market is . . . robust, competitive

¹⁰See, e.g., *Memorandum Opinion and Order*, CC Docket No. 86-1, released Feb. 1, 1988, at para. 10. ESPs may argue that enhanced services traffic is indistinguishable from telecommunications traffic and that they do not know when access charges should apply and when they should not, but such an assertion is not an excuse for failure to follow Commission rules. ESPs should be able to develop a means to distinguish the traffic and to pay applicable access charges, either by actual measurement or by estimates based on appropriate studies. Furthermore, the Internet long distance "market" is moving beyond two computers equipped with software to enable voice communications; recent articles in the popular press discuss improvements being made to enable standard telephones to be connected over the Internet. (See, e.g., *Newsweek*, May 13, 1996, at pp. 43, 46, attached hereto.) Certainly, ESPs should be able to identify communications over their networks initiated by standard telephones or servers rather than by individual end users.

¹¹The fact that end users are exploiting the artificial pricing disparity is reflected in service problems throughout the nation. SWBT has experienced such problems throughout its service area, with particularly severity in major cities such as Dallas, Houston, St. Louis, and Kansas City. End users establish a local call to their Internet access provider and may not terminate that call for many hours, using the connection not only to obtain information over the Internet but also to carry on Internet long distance conversations. The local exchange network was not constructed with sufficient capacity to accommodate large volumes of calls of such lengthy duration. Other customers may get no dialtone or slow dialtone as a result of the overburdening of the network. LECs are in the process of spending millions of dollars to deploy facilities to meet the exponential demand growth spurred by Internet usage.

and diverse . . .”¹² AT&T estimated that, in 1995, its total enhanced services revenues amounted to \$427 million; the U.S. domestic market for enhanced services generated \$17.4 billion during that year, according to AT&T’s figures.¹³ AT&T, quoting Morgan Stanley, Inc., further quantified the explosive growth rate of Internet service revenues: a growth of 130 percent from 1994 to 1995, and a projected cumulative average growth rate of 100 percent from 1995 through 2000.¹⁴ To the extent that the enhanced services industry ever needed to be propped up in order to develop, that purpose has vanished.

In various proceedings before the Commission, SWBT and its parent company, SBC Communications Inc., have proposed and supported various actions that the Commission should undertake to ensure economically rational use and pricing of telecommunications networks by carriers and customers.¹⁵ The Commission’s goal must be to permit the telecommunications industry to reach the objective of “a minute is a minute” pricing for the same or similar network functionalities. As SWBT has previously pointed out, “[r]equiring some households to pay a higher price to further the national priority of universal service while continuing to mandate implicit support for thriving [enhanced services] businesses simply cannot be squared with either the intent of the Act or the Commission objective of “a minute is a minute” interconnection rates

¹²See, Comments of AT&T Corp. in CC Docket No. 96-61, filed April 25, 1996.

¹³Id., footnote 35.

¹⁴Id., footnote 36.

¹⁵See, e.g., Comments of SBC Communications Inc. filed March 4, 1996, in *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Radio Service Providers*, CC Docket No. 95-185; Comments of Southwestern Bell Telephone Company filed April 12, 1996, in *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (“Universal Service Comments”).

between carriers.”¹⁶ All traffic that uses LEC facilities and that requires the same functions to be performed by the LEC should be charged the equivalent rates, thus eliminating incentives for uneconomical use of certain network functionalities.

Because, as is pointed out above, ESPs are in violation of Commission rules when they provide interstate telecommunications services without paying applicable access charges, the Commission has the authority to enforce its rules with orders that could correct the existing inequities immediately. First, the Commission could immediately eliminate the ESP exemption and subject ESPs to the same access charge structure that currently applies to interexchange carriers. Second, the Commission could order the ESPs to cease providing interstate telecommunications services without paying applicable access charges, or incur forfeiture penalties. ESPs could then choose whether to implement measures to distinguish traffic, whether to pay access charges on all traffic, or whether to cease mixed use operation until traffic could be distinguished.

Regardless of which immediate option the Commission chooses, the implementation of a long-term solution to this inequity is imperative. The Commission must expeditiously initiate a rulemaking proceeding to reform the entire access charge framework. Such access reform must include a policy to address the problems and inequities created by the continued exemption of ESPs from access charges. That policy should promote the following important national interests: (1) efficient use of carriers’ networks; (2) preservation and advancement of universal service; (3) even-handed competition; (4) development of the National Information Infrastructure; (5) fair

¹⁶Universal Service Comments, at 22-23, footnote citation omitted.

recovery of the costs of the Public Switched Telephone Network; and (6) convenience and reasonable service quality for end users.

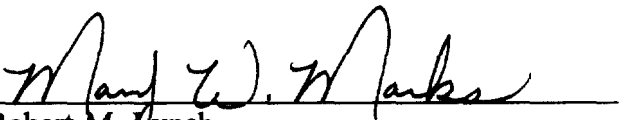
IV. CONCLUSION.

For the reasons discussed above, the Commission should decline to issue the declaratory ruling and to order the special relief against the respondents, as requested in ACTA's petition. Commission regulation of computer software developers or vendors, as well as of the Internet itself, is not contemplated by the Communications Act and is not in the public interest. However, although ACTA requested the wrong solution, it did identify a serious problem: pricing inequities for long distance calls based on the exemption of ESPs from access charges. The Commission should effect an immediate solution to the problem (1) by eliminating the ESP

exemption or (2) by enforcing its rules and by requiring ESPs to pay applicable access charges for interstate telecommunications traffic. The correct long-term solution to the problem, however, can be achieved only through immediate reform of the entire access charge framework; and the Commission should expeditiously undertake such reform.

Respectfully submitted,

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BUSINESS

Calling All Computers

The new Internet phone technology can be a game-changer. The technology is not yet here, but it's sure to be cheap.

JAMIE TANAKA

Savings that Candice Bergen never imagined: VocalTec chairman Elon Ganor in a San Jose hotel

BY STEVEN LEVY

FED UP WITH LONG-DISTANCE RATES? Had it with commercials promising a crummy 10 or 20 percent reduction in those rates? Well, now you can *really* switch—not to a different phone provider but to the Internet. Then you can reap savings that Candice Bergen never imagined, cutting your tariffs in some cases, from hundreds of dollars to, um, zero. For instance: if you pay the monthly flat rate that's common in cyberspace connections, you could get up in the morning and begin a phone call to a pal across the city, the country or the globe, and keep the line open to swap observations and bon mots all day, or all week. The price: not a penny more on your \$19.95 monthly bill.

Suddenly, the concept of using the Internet as a way for people to talk to each other—not through e-mail, but the spoken word—has gone nuclear. And even before shedding its glitches. Last week Netscape

announced that the new version of its Navigator Web browser includes technology to use the computer as a phone. Microsoft then announced that the next version of its browser, due this summer, would include a similar feature. These developments will supercharge this growing industry, serving as many as 63 million cyberyakkers by 1999, reckons International Data Corp.

This phenomenon was also the force behind last week's \$2 billion merger between a traditional phone-technology company, MFS Communications, and the Internet service provider UUNet. "We're really convinced that this is a fundamental shift in the nature of communications," says MFS chairman James Q. Crowe, who predicts that in the not-too-distant future the entire infrastructure of voice telecommunications will move to the Internet. "At a certain point in time you'll be able to buy a telephone in Kmart that, under the blankets, is

really an Internet access device," says Michael Goldstein, head of Voxware, a software company.

It turns out to be relatively easy to adapt the Internet to speech communication. After all, the global system net was designed to shuttle information around. Transforming your computer into a phone is simply a matter of loading the software into a machine equipped with basic multimedia capabilities (sound technology, microphone), hooking to the Net and typing in the right address for the person you want to talk to. If your friend is online, he or she will get a message asking whether to accept the call. If so, the two of you will talk into your respective mikes and listen through the computer speakers. (If your friend isn't online, you can, of course, leave a message.)

Since it's a lot cheaper to move data on the Net than on the phone system, online calls will cost a lot less. (Crowe of MFS es-

timates that it's a hundred times cheaper.) The computer also exceeds the humble telephone in versatility. The current crop of products not only includes some of the jazzier innovations we've seen in the telephone market—caller ID, voice mail and such—but more exotic features. You can get wiretap-proof encryption, or the ability to share documents and doodle on a common virtual white board while the conversation goes on.

Is there a catch? Of course. Most glaringly, you are limited to calling those who are both online and equipped with the same brand of phone software you are using. Then there's the quality of the transmissions. The conversational flow can be choppy, a vocal equivalent of typing faster than a word processor can display text on screen. And a problem called "latency" means that between the time a quip is uttered and the listener chuckles, a second or so has elapsed. Finally, setting up and using these tools, like many other things on the Internet, can be roughly as difficult as assembling a mountain bike.

The good news is that the industry, eying the prizes to come, is working overtime to address these problems. As the software evolves, it will almost certainly become easier to use. More bandwidth will increase voice quality and, one hopes, insure that all that digital gab doesn't overwhelm the Net itself. Best of all, almost everyone agrees that a standard will soon be set so that the user of any product can talk to users of the others. Yes, even Netscape navigators will ring up Microsoft explorers. And schemes are already underway to allow phone calls made on computers to ring



Jazzy innovations: Netscape's Michael Po (left) and Chris Walton

up standard phones and vice versa. "The two systems will weave together," says Robert Kennedy, president of NetSpeak, which sells a product called WebPhone.

A thornier matter is potential regulation. An organization called ACTA, representing small long-distance carriers, has petitioned the FCC to stop people from talking on the Internet, charging that it represents unfair competition. Since the FCC claims devotion to competition and innovation, don't count on a favorable ruling. Especially since the companies you would think would most object to Internet telephony—ding-dong giants like AT&T, MCI and Bell Atlantic—profess to see it as not a threat but an opportunity. "Nobody big is really fighting it," marvels Netscape VP Marc Andreessen. "The long-distance companies see it as a way to disenfranchise the Baby Bells. The Baby Bells see it as a way to disenfranchise the long-distance compa-

nies. The cable companies see it as a way to compete in the phone space."

Are you wondering how these companies plan to make money from this? Don't worry—they'll figure it out. One idea is to offer multiple levels of service. "There might be different billing models, with standard and preferred service," says Elon Ganor, CEO of VocalTec, an Israel-based maker of the best-selling Internet Phone software. If you're happy to carry on a conversation that sounds like a dispatch from a war correspondent, you may still get off cheap, though probably not for that twenty-buck flat rate available today. But for an extra price your Internet provider, who may well be the same friendly conglomerate who currently


sells you phone service, will provide a higher-quality line that guarantees your conversation will be as clear as glass, or at least fiber.

Meanwhile, there are already plenty of pioneers happy with what's out there now. Vendors report popularity with retirees who use it to keep in touch with friends and family. And businesses are beginning to dial in. David Stephen Murphy of Damar Group, Ltd, a Columbia, Md.-based book-publishing company, uses the \$49 WebPhone software for contact and support of international customers; he has no complaints with the quality and is rapturous on the cost. "We use it on a daily basis," he says, "and some months we save a thousand dollars." As far as he's concerned, it pays to switch.

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CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Comments of Southwestern Bell Telephone Company" in RM No.8775 has been filed this 8th day of May, 1996 to the Parties of Record.

A handwritten signature in black ink, appearing to read 'Katie M. Turner', is written over a horizontal line.

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May 8, 1996

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